

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KEITH C. TOLBERT,	:	
Plaintiff,	:	
	:	
v.	:	No. 2:22-cv-01182
	:	
CORRECTIONAL OFFICER BALDWIN,	:	
DR. STEPHEN WEINER, and	:	
LT MORGAN,	:	
Defendants.	:	

O R D E R

AND NOW, this 30th day of November, 2022, upon consideration of the Notice Regarding the Estate of Stephen Weiner, DO, *see* ECF No. 31, and for the reasons set forth in the Opinion issued this date, **IT IS ORDERED THAT:**

1. Nicola S. Wiener, as representative of the Estate of Dr. Stephen Weiner, is **SUBSTITUTED** as a defendant for Dr. Stephen Weiner.
2. Plaintiff's Motion for Leave to File a Second Amended Complaint, ECF No. 53, is **GRANTED**. The Clerk of Court is **DIRECTED** to redocket ECF pages 2-18 of the Motion as the Second Amended Complaint.
3. Defendants' Motions to Dismiss, ECF Nos. 18, 20, and 29, are **DISMISSED as moot**.
4. Defendants shall respond to the Second Amended Complaint **within fourteen (14) days** of the date the Second Amended Complaint is docketed.¹

¹ Defendants are advised that if they respond by filing a motion to dismiss the Second Amended Complaint based on any matters outside the pleadings, such motion(s) shall be framed as: a motion to dismiss or, in the alternative, for summary judgment, in order to provide sufficient notice to Tolbert that summary judgment might be entered. *See* Fed. R. Civ. P. 12(d)

BY THE COURT:

/s/ Joseph F. Leeson, Jr.

JOSEPH F. LEESON, JR.

United States District Judge

(“If, on a motion under Rule 12(b)(6) . . . , matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.”); *Hilfirty v. Shipman*, 91 F.3d 573, 578-79 (3d Cir. 1996) (holding that motions to dismiss framed in the alternative as motions for summary judgment provided sufficient notice that the court would consider the motions under the summary judgment standard); *Latham v. United States*, 306 F. App'x 716, 718 (3d Cir. 2009) (applying *Hilfirty* to a pro se plaintiff).